

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

CHESTER PHIL LLOYD COLE,

Defendant-Appellant.

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UNPUBLISHED

July 14, 2005

No. 254186

Jackson Circuit Court

LC No. 03-000564-FC

Before: Fitzgerald, P.J., and Meter and Owens, JJ.

PER CURIAM.

Defendant appeals as of right from his conviction, following a bench trial, of first-degree premeditated murder, MCL 750.316, related to the drowning death of his wife. Defendant was sentenced to life imprisonment without parole. We affirm.

Defendant's first issue on appeal is that he is entitled to remand because the trial court did not make specific findings regarding his manslaughter defense as required by MCR 2.517(A)(1). We disagree. Whether the trial court properly complied with MCR 2.517 is a question of law. We review legal questions de novo. *People v Conner*, 209 Mich App 419, 423; 531 NW2d 734 (1995).

A trial court's "factual findings are sufficient so long as it appears that the trial court was aware of the issues in the case and correctly applied the law." *People v Armstrong*, 175 Mich App 181, 185; 437 NW2d 343 (1989). In the instant case, the trial court addressed each element of first-degree murder. First, the court addressed the issue of causation. The court stated that, based on defendant's telephone call admitting that he killed his wife, letters to his family admitting that he killed his wife, statements to the lead detective admitting that he killed his wife, and statements of witnesses who testified that defendant wanted to kill his wife because she would not divorce him, it was clear that defendant caused his wife's death.

Second, the court found an intent to kill. The court based the intent on evidence of defendant's prior statements to close friends that he wanted to kill his wife, or "do her in," and the length of time he held the victim under water. Defendant admitted to a police officer that he held his wife face-up in the water "a long time," until she stopped moving. Expert testimony estimated the time to be at least thirty seconds.

Third, the court found the existence of premeditation. The court noted that defendant made statements to others regarding his desire to kill his wife. One statement in particular was within days of her death. The court also found premeditation because defendant and his sister borrowed a car under the guise of going to a store and instead picked up defendant's wife, taking her at night to an isolated location where she was drowned.

Finally, the court determined that defendant acted with deliberation because, given the length of time defendant held his wife under water and given that he left her helpless floating in the river, there was ample time for him to consider his actions and the consequences. The court concluded that there had been "a real and substantial reflection" and that, therefore, the killing was not justified or excused.

A finding of premeditation and deliberation logically rejects any defense of provocation. Because the trial court found premeditation and deliberation based on the evidence presented, it would be unnecessarily redundant to require a finding that specifically uses the terms "manslaughter" or "heat of passion." A reading of the trial court's opinion shows that the trial court clearly understood the issues and correctly applied the law; therefore, defendant is not entitled to remand.

The second issue on appeal is that the evidence was not sufficient to support a finding of premeditation. We disagree. The review of the sufficiency of the evidence to support a criminal conviction is an issue of law, and we review it de novo. See, e.g., *People v Mayhew*, 236 Mich App 112, 124; 600 NW2d 370 (1999).

A challenge to the sufficiency of the evidence from a bench trial requires this Court to determine, when viewing the evidence in the light most favorable to the prosecution, "whether a rational trier of fact could find that the essential elements of the crime were proven beyond a reasonable doubt." *People v Wardlaw*, 190 Mich App 318, 319; 475 NW2d 387 (1991). Viewing the evidence in the light most favorable to the prosecution, the evidence was sufficient to sustain a conviction of first-degree, premeditated murder.

A number of factors can be considered to determine if a killing was premeditated; the factors may include:

- (1) the previous relationship between the defendant and the victim; (2) the defendant's actions before and after the crime; and (3) the circumstances of the killing itself, including the weapon used and the location of the wounds inflicted. [*People v Plummer*, 229 Mich App 293, 300; 581 NW2d 753 (1998).]

Based on the evidence, it is clear that the relationship between defendant and his wife was strained. It was common knowledge that he wanted a divorce, and he told people that he wanted to kill her because she refused to divorce him. Also, before the crime was committed, defendant borrowed a car ostensibly to go to a store but instead he went to pick up his wife, from whom he was estranged, to go fishing, and defendant would not let a family friend tag along on the trip. After the crime, defendant hid evidence (including his shoes), suggested the car be sold, and lied to detectives about the information he had. Finally, the killing itself was at defendant's own hands. He held the victim face-up underwater until she stopped moving and then left her floating in the river.

Viewing this evidence in the light most favorable to the prosecution, a reasonable trier of fact could determine that defendant made a plan to kill his wife before he picked her up to go fishing. Even if the trial court believed that the defendant and his wife fought about a divorce at the river as defendant claims, the evidence suggests that defendant planned to kill his wife before he brought her to the river on the evening in question. Therefore, we hold that the evidence was sufficient for a finding of premeditation.

Affirmed.

/s/ E. Thomas Fitzgerald

/s/ Patrick M. Meter

/s/ Donald S. Owens